



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-7313

Re: Whether appropriations set forth in H. B. 206, Acts 49th Leg., for the Galveston State Psychopathic Hospital are now available for expenditure by the Board of Regents of the University of Texas, said Hospital having been transferred under the provisions of H. B. 740, Acts 49th Leg., to the University of Texas.

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. We quote from your letter as follows:

"Under House Bill No. 206 of the Regular Session of the 49th Legislature, an Act making appropriation for the support, maintenance and improvements of the Eleemosynary Institutions of the State of Texas there appears the following:

GALVESTON STATE PSYCHOPATHIC HOSPITAL

Salaries

For the Years Ending	
August 31	August 31
1946	1947

- | | | |
|--|------------|------------|
| 1. Caretaker, with water, light, fuel, laundry and housing for self and family ----- | \$1,200.00 | \$1,200.00 |
| 2. Two yardmen at \$75 per month----- | \$1,800.00 | \$1,800.00 |
| Total Salaries---- | \$3,000.00 | \$3,000.00 |

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Improvements, Repairs and Buildings		
3. General repairs and improvements	-----	\$15,000.00 \$15,000.00
Total improvements, repairs and buildings	-----	\$15,000.00 \$15,000.00
Grand Total, Galveston State Psychopathic Hospital	-----	\$18,000.00 \$18,000.00

"The same Legislature by House Bill No. 740 transferred the control of the Galveston State Psychopathic Hospital from the State Board of Control to the Board of Regents of the University of Texas.

"The question has now arisen as to whether the above mentioned appropriation follows the transfer of the control of the Galveston Psychopathic Hospital to the Board of Regents of the University of Texas; stated more specifically, is the above mentioned appropriation now available for the use of the Board of Regents in the operation and maintenance of the Galveston State Psychopathic Hospital?"

House Bill No. 740, Acts of the 49th Legislature, 1945, provides:

"Be it enacted by the Legislature of the State of Texas:

"Section 1. That from and after the effective date of this Act, the control and management of, and all rights, privileges, powers and duties incident thereto, the Galveston State Psychopathic Hospital, located at Galveston, Texas, which were formerly vested in and exercised by the State Board of Control, shall be transferred to, vested in, and exercised by the Board of Regents of the University of Texas, and hereafter, the aforesaid Hospital shall no longer be a part of the eleemosynary service of the State of Texas.

"Sec. 2. The Galveston State Psychopathic Hospital shall continue to be used as a Hospital for the treatment of nervous and mental diseases, both in the Hospital and out-patient clinic, and shall be available as a part of the teaching facilities in mental medicine for the School of Medicine of The University of Texas, located at Galveston, Texas.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of the conflict only.

"Sec. 4. The fact that there is now situated at Galveston, Texas, the Galveston State Psychopathic Hospital, consisting of a one hundred (100) bed mental hospital of substantial brick construction, erected at great expense to the State of Texas, which is not now being operated by the Board of Control for the benefit of the people of Texas, and the fact that the operation of said Hospital would also be of great benefit to the students of the School of Medicine of The University of Texas, as it was prior to the time it was shut down by the Board of Control, and the fact that the Hospital should be controlled and managed by the Board of Regents of The University of Texas in connection with the School of Medicine of The University of Texas, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

"Passed by the House, April 19, 1945: Yeas 119, Nays 0; passed by the Senate, May 16, 1945: Yeas 28, Nays 0.

"Approved May 24, 1945.

"Effective May 24, 1945."

As indicated in the emergency clause of H. B. 740 and evidenced by the appropriation items contained in H. B. 206 (quoted in your letter), it is apparent that the appropriations set forth in H. B. 206 for the Galveston State Psychopathic Hospital contemplated the support and maintenance of said institution on a "care-taker" basis rather than on a basis of active operation as a psychopathic hospital. We note further that on the date when the Legislature passed H. B. 206, May 21, 1945, the

the Governor had not approved H. B. 740 and that H. B. 740 was not effective until May 24, 1945. Furthermore, the provisions of H. B. 206 were not operative until the beginning of the new biennium, September 1, 1945.

Under the provisions of H. B. 740, on May 24, 1945, "the control and management of, and all rights, privileges, powers, and duties incident thereto, the Galveston State Psychopathic Hospital, ----which were formerly vested in and exercised by the State Board of Control", were "transferred to, vested in, and exercised by the Board of Regents of the University of Texas," and said hospital no longer retained its status as a State Eleemosynary Institution. On the basis of the above provisions, this department held in Opinion No. 0-7209 that the Galveston State Psychopathic Hospital (after May 24, 1945) was subject to laws regulating the University of Texas. The opinion further pointed out that in view of the provisions of H. B. 173, which named the Psychopathic Hospital as a part of the University of Texas, and which re-appropriated certain balances on hand in certain institutional funds, a balance in the local fund of the Galveston State Psychopathic Hospital should be transferred to the University of Texas. We note, however, that in the instant situation, the appropriation listed in H. B. 206 for the Galveston Psychopathic Hospital for the biennium, September 1, 1945, to August 31, 1947, could not have been available for any purpose prior to September 1, 1945, and, as of May 24, 1945, such appropriation was not available to or under the control of the Board of Control. It is therefore our opinion that such amount set forth in said appropriation for a future biennium could not be regarded as a balance or fund of the Galveston State Psychopathic Hospital which would be subject to transfer when the Galveston State Psychopathic Hospital was transferred to the University of Texas on May 24, 1945. We point out further that on May 26, 1945, subsequent to the passage of H. B. 206, as well as subsequent to the effective date of H. B. 740, the Legislature passed H. B. 173 which relates to appropriations for State Educational institutions and includes the following:

"The University of Texas Medical Branch

"Psychopathic Hospital

"Salaries

"202. Psychiatrist and/or		
Physicians.	\$2,800.00	\$2,800.00
"203. Bookkeeper.	2,100.00	2,100.00
"204. Purchasing Clerk.	1,800.00	1,800.00

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205.	Dentist (part-time)	\$1,000.00	\$1,000.00
206.	Dietitian	2,400.00	2,400.00
207.	Gardeners (2).....	3,000.00	3,000.00
208.	Chief Mechanic.....	2,100.00	2,100.00
209.	Nurse, Chief.....	2,400.00	2,400.00
210.	Graduate Nurses (Psychiatric)...	10,500.00	10,500.00
211.	Graduate Nurses (General Duty).	9,000.00	9,000.00
212.	Occupational and Recreational Supervisor.....	2,100.00	2,100.00
213.	Social Service Worker.....	2,400.00	2,400.00
214.	Telephone Operators (3).....	3,240.00	3,240.00
215.	Watchman.....	1,320.00	1,320.00
216.	Assistants and Technicians.....	5,000.00	5,000.00
217.	General Hospital Personnel.....	8,800.00	8,800.00

Total Salaries.....\$59,960.00 \$59,960.00

Maintenance and Miscellaneous

218.	Support and Maintenance.....	\$75,000.00	\$75,000.00
219.	Fuel, water, light, power, heat and contingencies.....	10,000.00	10,000.00
220.	Traveling expenses of Staff..	<u>500.00</u>	<u>500.00</u>

Total Maintenance and
Miscellaneous \$85,500.00 \$85,500.00

Improvements, Repairs, and Buildings

221.	General improvements and repairs	\$ 5,000.00	\$ 5,000.00
222.	Reconditioning and repair of storm damage, etc.....	<u>10,000.00</u>	<u> </u>

Total improvements, repairs,
and buildings..... \$15,000.00 \$ 5,000.00

Re-equipping Hospital

223.	Equipment and Replacement (during biennium).....	<u>\$40,000.00</u>	<u> </u>
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Total Psychopathic Hospital \$200,460.00 \$150,460.00"

From an examination of the foregoing items, it is apparent that said appropriation fully covers all of the contemplated expenditures with reference to the operation of the

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Psychopathic Hospital as a part of the University of Texas for the 1945-47 biennium. In view of this fact, it is manifest that the Legislature did not contemplate the expenditure of both appropriations with reference to the Psychopathic Hospital; that is, one appropriation (H.B. 206) for said institution on a care-taker basis, and not in active operation (as indicated in the emergency clause of H. B. 740 and appropriation items in H. B. 206) and still another appropriation (H.B. 173 passed subsequent to H. B. 206 and pursuant to H. B. 740) covering the active operation of said hospital as a part of the University of Texas, all within the same biennium.

It has been held that where two acts passed at the same session of the Legislature cannot be reconciled by any known rule of construction, the latter of the two acts will operate to repeal the former. (See: Sutherland, Statutory Construction, 3rd Ed., Horak, Vol. 1, Sec. 2020, p. 485; 39 Tex. Jur., "Statutes", Sec. 78, p. 147.) In view of the above and foregoing, it is our opinion that the only effective appropriation for the support and maintenance of the above mentioned Psychopathic Hospital for the biennium, September 1, 1945 to August 31, 1947, is that set forth above in H. B. 173, and that the appropriation for the Galveston State Psychopathic Hospital set forth in H. B. 206 is not available for expenditure by the Board of Regents of the University of Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

/s/ J. A. Ellis
Assistant

JAE:rt

Approved: August 9, 1946
/s/ Carlos C. Ashley
First Assistant Attorney General

Approved: Opinion Committee
/s/ BWB, Chairman